

January 26, 2004

LOIS GUSTAFSON  
5024 268<sup>th</sup> Ave NE  
REDMOND WA 98053

Subject: Complaint Filed Against David Asher - PDC Case No. 03-160A (Re-Opened)

Dear Ms. Gustafson:

The Public Disclosure Commission staff has completed its follow-up investigation of your complaint, re-opened on August 21, 2003, alleging that the 2002 David Asher campaign violated RCW 42.17.640 by exceeding the \$625 contribution limit for the 2002 primary election when the campaign accepted an in-kind contribution from Argosy Cruise Lines valued in excess of \$625.

On July 15, 2003, you were sent a letter dismissing your complaint against David Asher in PDC Case No. 03-160. On August 15, 2003, PDC staff received a telephone call from Representative Toby Nixon. He objected to the dismissal of your complaint, stating that he had recently requested pricing from Argosy Cruise Lines for renting a vessel for two to three hours on a Monday night with no catering services provided, and was quoted a rate of \$1,785, which he said would not be reduced if the vessel remained moored during the event. PDC staff confirmed this price with Argosy Cruise Lines for the above-mentioned specifications. Therefore, on August 21, 2003, PDC staff re-opened its investigation into whether Mr. Asher exceeded the contribution limit for the 2002 primary election by accepting an over-limit contribution from Argosy Cruise Lines.

The PDC staff reviewed your allegation in light of the following statutes and administrative rules:

**RCW 42.17.020(14)(a)(i)** states that a "contribution" includes anything of value, including professional services for less than full consideration.

**RCW 42.17.640** sets contribution limits for state office candidates and sets standards for acceptance of contributions for the primary and general elections. The limit for the 2002 primary election for a legislative candidate was \$625.

**WAC 390-05-235(1)(b)** states in part that the "Fair market value" is the amount in cash which a well-informed buyer or lessee, willing but not obligated to buy or lease that property, would pay, and which a well-informed seller, or lessor, willing but not obligated to sell or lease it, would

accept, taking into consideration all uses to which the property is adapted. If, in determining "fair market value" the amount a buyer would pay and the amount a seller would accept would be based on varying standards, then the fair market value of the contribution shall be based on the amount the contributor would ordinarily accept for selling the property, rather than the amount the candidate or political committee would ordinarily pay.

We found:

- The published Argosy Cruise Lines' rates for chartering the M.V. Kirkland include the below listed rates.

Mid-day <u>M, T, W, Th, F</u>	Mid-day <u>Sa, Su</u>	Evening <u>Su, M, T, W</u>	Evening <u>Th, F, Sa</u>	Stand-by
\$1,700	\$1,975	\$1,950	\$2,400	\$250

- Included with the published charter rates is a "stand-by rate," which, according to testimony from the Argosy sales manager, is an amount assessed hourly for a boat remaining dockside after the client has been charged a cruise rate. There is no published rate for only using a boat dockside.
- Given that Argosy sales representatives do not have a published dockside rate for moored events or a policy of providing dockside charters for free, and given Argosy's inability to provide documentation of similar sales, we have concluded that the Argosy invoices provided do not represent common sales practices, nor do they reflect an accurate picture of past dockside sales. As a result, PDC staff was unable to use past sales practices as a measure for determining the value of using a moored vessel.
- According to testimony by Argosy employees, the sales staff has the authority to negotiate rates with clients, although they start with the published prices. The President of Argosy stated that he and the sales staff discount their product frequently in varying amounts depending on the facts and circumstances.
- The Asher campaign received verbal confirmation from Argosy on the fair market value for use of the vessel, which the campaign reported timely on its PDC reports. During the campaign, Mr. Asher instructed his campaign staff to pay for any amount that was over the contribution limit. The President of Argosy, John Blackman, stated that he valued the boat at \$625 based on the M.V. Kirkland's stand-by rate of \$250 per hour, and communicated that amount to his staff. Mr. Blackman said he arrived at a fair market value of \$625 based on the scheduled event time of two hours, noted in the reservation system from 6:00 – 8:00 p.m., and a half hour set-up period. Mr. Blackman testified that he was unaware of the campaign contribution limit and did not base the value of using the vessel on it. Mr. Asher and the Asher campaign staff also testified that they did not discuss contribution limits with Mr. Blackman.

The Argosy invoices reflect the company's internal sales policy, which allows the sales staff to negotiate rates with clients after starting from the published prices. Although Mr. Blackman valued the Asher event according to the \$250 stand-by rate for the vessel, testimony shows that this amount is only charged after a customer first pays a charter rate for a cruise, in this case \$1,785. Although this amount is in excess of the \$625 primary election campaign contribution limit by \$1,160, there is no evidence to suggest that the Asher campaign or Argosy Cruise Lines intentionally exceeded the contribution limit. Mr. Asher immediately repaid \$1,160 to Argosy Cruise Lines on January 12, 2004 when the over-limit contribution was brought to his attention by PDC staff. The campaign and Argosy Cruise Lines will be cautioned to pay close attention to the contribution limit requirements in future election campaigns. Argosy Cruise Lines will be cautioned to value moored usage of vessels at the going rate based on the published rates for the service being provided when determining the value of contributions.

After a careful review of the alleged violations and relevant facts, we have concluded our follow-up investigation and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing this case against the 2002 David Asher campaign based on 1) Mr. Asher's prompt refund of the excess contribution, 2) the prior direction he had given to his campaign regarding payment of any amount that was over the limit, and 3) no history of the Asher campaign accepting excess contributions.

If you have questions, please contact Phil Stutzman, Director of Compliance, at 360-664-8853 or toll free at 1-877-601-2828.

Sincerely,

Vicki Rippie  
Executive Director

c: David Asher  
Representative Toby Nixon  
John Blackman, Argosy Cruise Lines